



BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. APHIS-2012-0089]

Cold Treatment for Fresh Fruits and Vegetables; MidAmerica St. Louis Airport, Mascoutah, IL

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow, under certain conditions, the cold treatment of imported fruits and vegetables upon arrival at the MidAmerica St. Louis Airport, Mascoutah, IL.

We have determined that there are biological barriers at this port that, along with certain safeguards, would prevent the introduction of fruit flies and other insect pests into the United States in the unlikely event that they escape from shipments of fruits or vegetables before the fruits or vegetables undergo cold treatment. This action would facilitate the importation of fruit requiring cold treatment while continuing to provide protection against the introduction of fruit flies and other insect pests into the United States.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0089-0001>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2012-0089, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0089> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. S. Gadh, Senior Risk Manager—Treatments, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2018.

SUPPLEMENTARY INFORMATION:

Background

The phytosanitary treatments regulations in 7 CFR part 305 set out general requirements for certifying or approving treatment facilities and for performing treatments listed in the Plant Protection and Quarantine (PPQ) Treatment Manual¹ for fruits, vegetables, and other articles to prevent the introduction or dissemination of plant pests or noxious weeds into or through the United States. Within part 305, § 305.6 (referred to below as the regulations) sets out requirements for treatment procedures, monitoring, facilities, and enclosures needed for performing sustained refrigeration (cold treatment) sufficient to kill certain insect pests

¹ The PPQ Treatment Manual is available at (http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf).

associated with imported fruits and vegetables and with regulated articles moved interstate from quarantined areas within the United States.

Most imported fruits or vegetables that require cold treatment undergo that treatment while in transit to the United States. However, the Animal and Plant Health Inspection Service (APHIS) also allows imported fruits or vegetables to undergo cold treatment at an approved cold treatment facility in either the country of origin or after arrival in the United States at a cold storage warehouse approved by the APHIS Administrator.

In § 305.6, paragraph (b) limits cold treatment facilities to those cold storage warehouses approved by the Administrator and located in the area north of 39° latitude and east of 104° longitude, or under special conditions at one of the following ports, which are outside the geographic area stipulated in the regulations: The maritime ports of Wilmington, NC; Seattle, WA; Corpus Christi, TX; and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; and Hartsfield-Atlanta International Airport, Atlanta, GA. The location restrictions serve as an additional safeguard against the possibility that fruit flies or other pests could escape from imported articles prior to treatment and become established in the United States.

As stated previously, the regulations do allow cold treatment facilities to be located outside the geographical area stipulated by the regulations. In order to approve those locations, APHIS conducts site-specific evaluations and determines whether regulated articles can be safely transported to cold treatment facilities under special conditions to mitigate the possible escape of pests of concern.

Proposed Additional Port

APHIS has received a petition from North Bay Produce, Inc., to designate the MidAmerica St. Louis Airport, Mascoutah, IL, as an approved location for the cold treatment of imported fruits or vegetables. In addition, some importers of fruits and vegetables have shown considerable interest in locating cold treatment facilities in places that are not currently allowed under the regulations. Currently, no cold treatment facilities are available near the proposed location. An APHIS-approved cold treatment facility in this location would allow importers to treat fruits and vegetables arriving from foreign locations and requiring a treatment to meet U.S. entry requirements.

In response to this request, we are proposing to add the MidAmerica St. Louis Airport, Mascoutah, IL, to the list of ports that are designated as approved locations for cold treatment of imported fruits or vegetables. This proposal is based on our determination that there are biological barriers in the area of this port that, along with certain safeguards, would prevent the introduction of fruit flies and other insect pests in the unlikely event that they escape from shipments of fruits or vegetables before the fruits or vegetables undergo cold treatment.

To support this action, we have prepared a treatment evaluation document (TED) entitled “Allowing a new cold treatment facility at Mascoutah, Illinois, located outside the area currently authorized.” Copies of the TED may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT and may be viewed on the Internet on the Regulations.gov Web site or in our reading room (see ADDRESSES above for instructions for accessing Regulations.gov and the location and hours of the reading room). In the TED, we concluded that the pest risks posed by the establishment of a cold treatment facility at the MidAmerica St. Louis Airport, Mascoutah, IL, outside of the area north of 39° latitude and east of 104° longitude, can

be adequately managed through use of special conditions to mitigate the possible escape of pests of concern.

Special Conditions for the MidAmerica St. Louis Airport, Mascoutah, IL

In addition to the general requirements in § 305.6(a) through (g) of the regulations concerning cold treatment, we are proposing to apply the following requirements to cold treatment conducted at the MidAmerica St. Louis Airport, Mascoutah, IL. These requirements would be added to the regulations as a new paragraph (h)(5) of § 305.6.

In paragraph (h)(5)(i) of § 305.6, we are proposing that bulk and containerized consignments of fruits or vegetables arriving for cold treatment would have to be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

Under this proposal, paragraph (h)(5)(ii) would lay out a number of conditions that any proposed facility would have to meet, which would be agreed upon by the involved parties and included in the facility compliance agreement required under paragraph (f) of § 305.6. These conditions, which are described below, would be listed in paragraphs (h)(5)(ii)(A) through (h)(5)(ii)(F).

- The facility would only be certified if APHIS determines that regulated articles would be safely transported to the facility from the port of arrival without significant risk that plant pests will escape in transit or while the regulated articles are at the facility.
- Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit would have to arrive in pest-proof packaging that prevents the escape of the pests of concern.

- The facility would have to ensure that the pest-proof cartons are off-loaded from containers in a safeguarded environment and at no time would the articles be removed from the cartons prior to treatment.
- Arrangements for treatment would have to be made before the departure of a consignment from its port of entry or points of origin in the United States. The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of consignments from aircraft to a cold treatment facility will not be allowed until an acceptable route has been agreed upon.
- The facility would have to have contingency plans, approved by the APHIS Administrator, for safely destroying or disposing of fruit.
- The facility would have to maintain physical separation of treated articles from untreated articles and apply all required safeguards (e.g., larger consignments are broken up into smaller boxes following treatment and those treated articles are required to be packaged in pest-proof containers per an agreement between the treatment facility and the importer) before releasing to local markets or for movement to other States.

We believe that the mitigation measures described above, which are based on safeguards in place for other cold treatment facilities, would prevent the introduction of fruit flies and other plant pests that may be in shipments of fruits or vegetables arriving at the MidAmerica St. Louis Airport, Mascoutah, IL, for cold treatment.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

This proposed rule would amend the regulations to allow a new cold treatment facility to be located at MidAmerica St. Louis Airport, Mascoutah, Illinois. The facility is expected to be used mainly to treat imported blueberries. While most, if not all, blueberry farms in the United States are small entities, we do not expect the rule to significantly affect the market for blueberries because the proposed facility is not projected to result in a significant increase in the quantity of blueberries imported into the United States. The United States is the world's largest producer of blueberries and U.S. blueberry exports exceed imports four-fold.

The proposed cold treatment facility is expected to benefit the MidAmerica St. Louis Airport and the local economy. The facility is expected to result in at least 800 flights of produce requiring cold treatment per year, raising at least \$8 million in direct income for the airport. MidAmerica St. Louis Airport is classified as a small entity within the NAICS category

of Other Airport Operations (NAICS 488119), for which the small-entity standard is annual revenue of not more than \$30 million. Our initial regulatory flexibility analysis discusses the expected positive economic effects of the rule for the MidAmerica St. Louis Airport and related local businesses.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 7 CFR part 305 as follows:

PART 305--PHYTOSANITARY TREATMENTS

1. The authority citation for part 305 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 305.6 is amended as follows:

- a. In paragraph (b), by adding the words “MidAmerica St. Louis Airport, Mascoutah, IL;” after the words “Seattle-Tacoma International Airport, Seattle, WA;” and

- b. By adding a new paragraph (h)(5) to read as set forth below.

§ 305.6 Cold treatment requirements.

* * * * *

(h) * * *

(5) Airport of Mascoutah, IL. Consignments of fruits or vegetables arriving at the MidAmerica St. Louis Airport, Mascoutah, IL, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

- (i) Bulk and containerized consignments of fruits or vegetables arriving for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

- (ii) APHIS will evaluate facility safeguards in light of the plant health risks involved and approve the operation of a facility in that location subject to the following conditions to be agreed upon by the involved parties and included in the compliance agreement required in § 305.6(f):

(A) The facility will only be certified if the Administrator determines that the regulated articles could be safely transported to the facility from the point of entry or origin without significant risk that plant pests will escape in transit to the facility or while the regulated articles are at the facility.

(B) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in pest-proof packaging that prevents the escape of the pests of concern.

(C) The facility must ensure that the pest-proof cartons are off-loaded from containers in a safeguarded environment and at no time are the articles to be removed from the cartons prior to treatment.

(D) Arrangements for treatment must be made before the departure of a consignment from its port of entry or points of origin in the United States. The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of consignments from aircraft to a cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(E) The facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruits or vegetables.

(F) The facility must maintain physical separation of treated articles from untreated articles and apply all required safeguards (e.g., larger consignments are broken up into smaller

boxes following treatment and those treated articles are required to be packaged in pest-proof containers per an agreement between the treatment facility and the importer) before releasing to local markets or for movement to other States.

Done in Washington, DC, this May 8, 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013-11322 Filed 05/10/2013 at 8:45 am; Publication Date: 05/13/2013]